SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok | Thursday 6th July, 2006 | No. 196

GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 38/LD/06

Dated : 4.7.2006.

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly having received the assent of the Governor on 15th day of June 2006 is hereby published for general information :

THE SIKKIM DISASTER MANAGEMENT ACT, 2006

ACT NO. 15 OF 2006
AN
ACT

to provide for effective management of disaster, for mitigation of effects of disaster, for administering, facilitating, coordinating and monitoring emergency relief during and after occurrence of disasters and for implementing, monitoring and coordinating measures for reconstruction and rehabilitation in the aftermath of disasters, in the State and for matters connected herewith or incidental thereto.

Be it enacted by the Legislature of Sikkim in the Fifty-Seventh year of the Republic of India as follows:-

Chapter I
Preliminary

Short title, extent commencement

1. (i) This Act may be called the Sikkim State Disaster Management Act, 2004.

(ii) It extends to the whole of the State of Sikkim.

(iii) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

Definitions

2. In this Act, unless the context otherwise requires, -

a. "Affected area" means the area declared as such under clause (2) of section 16 of this Act;

b. "Authority" means the Sikkim State Disaster Management Authority established under section 5 of this Act ;

c."Capacity building" means building of capacity to cope up with any disaster and includes :

i. Identification of existing resources relevant to any disaster and to be acquired for the purpose of this Act;
ii. Acquiring and creating resource, organization and training of groups in local community; and
iii. Coordination of such training;

d. "Commissioner" means Relief Commissioner for Disaster Management Department in the State;

e. "District Collector (DC)" or "District Magistrate (DM)" means an Officer in charge of an Administrative District as notified under the provisions of Criminal Procedure Code 1973;

f. "Disaster" means an actual or imminent event, whether natural or otherwise occurring in any part of state which causes, or threatens to cause, all or any of the following;
i. Widespread loss or damage to property, both movable or immovable; or
ii. Widespread loss of human life or injury or illness to human beings; or
iii. Widespread loss of livestock or illness to livestock; or
iv. Damage or degradation of environment;

and any of the effects specified in sub- section (a) to (d) is such that it is be beyond the capacity of the affected community to cope up with using its own resources and which disrupts the normal functioning of the community;

g. "Disaster Management" means a continuous and integrated process of planning and implementation of measures, with a view to:
i. mitigating or reducing the risk of disaster;
ii. mitigating the severity or consequence of disaster;
iii. capacity building;
iv. emergency preparedness;
v. assessing the effects of disaster;
vi. providing emergency relief and resource; and
vii. post – disaster rehabilitation and reconstruction;

h. "emergency preparedness" means the state of readiness which enables stakeholders to mobilize, organize and provide relief to deal with an impending or actual disaster or the effects of disaster;
i. "Local Authority" means a municipal corporation,municipal council, urban local bodies, Zilla Parishad, Gram Panchayat, legally recognised traditional institutions or any other institution declared by State Government;
j. "mitigation" means measures aimed at reducing the impact or effects of a disaster;
k. magistrate means judicial magistrate.
l. Prevention" means measures, the object of which is to avoid the occurrence of disaster;
m. "reconstruction" means repair and reconstruction of a property undertaken after a disaster;
n. "rehabilitation" means any activity the object of which is to restore normalcy in condition caused by a disaster;
o. "relief" means measures taken during or immediately after a declaration of disaster to diminish, or alleviate any suffering, pain, injury or distress or hardship caused on account of disaster;
p. "Secretary" means Secretary for disaster management Department in the State;
q. " Stakeholder" includes-
a. the State Government;
b. any statutory functionary;
c. voluntary agencies;
d. any other person/ agency identified by the State Government;
e. which participate in any manner in activities related to disaster management.

Chapter II
Authorities for Disaster Management

Authority for Disaster Management

3. For the purpose of carrying out the objects of this Act, the following shall be the authorities, namely: -

(a) The State Government;
(b) The Sikkim State Disaster Management Authority,
(c) Heads of Government Departments,
(d) Commissioner/ Secretary, Disaster Management Department,
(e) District Magistrate/ District Collector in charge of a District;
(f) Sub-Divisional Magistrate;
(g) Block Development Officer;
(h) Local Authorities.

Chapter III
Functions of State Government

Function of State Government

4. (1) The State government shall ensure that all the authorities specified in section 3 and stakeholders shall take such measures, as are necessary or expedient for the purpose of managing a disaster and mitigating its effects.
(2) In particular and without prejudice to the generality of the provisions of sub section (1) such measures may include the following: -
(a) ensuring that appropriate policies and guidelines are developed;
(b) revamping the Land Revenue Department to include all the aspects of Disaster Management and redesigning it as Disaster Management Department with enhanced areas of responsibilities to include mitigation, prevention and preparedness;

(c) ensuring the involvement of all departments of Government, local authorities, and any other organization, whose services are required for Disaster Management;

(d) mainstreaming Disaster Mitigation/ prevention into the development process;

(e) promoting techno-legal regimes for safe construction practices;

(f) ensure that State Building Codes are modified to incorporate the BIS codes/ National Building Codes;

(g) enhancing the capacity of Urban Local Bodies to enforce compliance of techno-legal regimes;

(h) ensuring that the State search & rescue team is constituted, equipped and made functional;

(i) ensuring that capacity building institutions are identified and made functional;

(j) ensure that State Relief Code is modified to incorporate mitigation, preparedness and planning measures and rename it as State Disaster Management Code;

(k) ensuring that the State Administration and local authorities shall take into consideration the guidelines laid down by the State Government while planning its activities;

(l) ensuring that State Response Plan, Emergency support function structures are prepared and tested;

(m) ensuring that State and District Emergency Operation Centers are established, equipped and made functional;

(n) ensuring that a comprehensive communication and technology network is established and maintained;

(o) developing simplified user friendly warning protocols up to the district level and ensuring its communication to community;

(p) facilitating procurement related to disaster management of materials, equipments and services in connection with the disaster management and ensuring their quality;

(q) ensuring that disaster management plans at State /District/ gram pancahayt/Village are prepared and training for managing the disaster is imparted;

(r) putting appropriate Standard Operating procedures for Incident Command System at each level for professional management of disaster;

(s) evolving a policy in conformity with the existing guidelines for receipt of funds from outside Government for Disaster Management;

(t) promoting adequate risk transfer, risk sharing and cost sharing mechanism;

(u) ensuring that adequate funds are available for Disaster Management;

(v) ensuring appropriate recovery measures;

(w) taking such steps and issuing such direction as may be necessary to prevent escalation of the disaster or to alleviate, contain or minimize the effects of the disaster;

(x) promoting scientific studies into the area of disaster risk reduction and ensuring its application in better disaster management;

(y) institutionalizing knowledge and lessons learnt in the process of disaster management;

(z) promoting regional co-operation in terms of man, material and knowledge sharing in the field of disaster management by involving North Eastern Council.

(3) Subject to provision of this Act, the State Government, may in exercise of its power and performance of its function under this Act, issue a direction in writing to a person or authority for the purpose of avoiding an imminent damage arising out of a disaster or mitigation of its effects and such person or authority shall comply with such direction.

(4) Subject to the provision of this Act, the State Government may in exercise of its powers and performance of its function, under this Act suspend operation of any executive order if such executive order prevents, hinders or delays any necessary action in coping with disaster.

Establishment of State Disaster Management Authority

5. (1) The State Government shall, by notification in the official gazette, establish an Authority in the name of the Sikkim State Disaster Management Authority with effect from such date as may be specified in the notification.

(2) The Authority shall consists of Chairperson and not more than twenty other members as follows, namely-

(a) The Chief Minister of Sikkim, Ex officio, who shall be the Chairman,

(b) Seven Ministers nominated by the Chief Minister,

(c) The Chief Secretary of the State, ex- officio;

(d) The Additional Chief Secretary, Ex-officio;

(e) The Commissioner/Secretary, Disaster Management Department, Ex officio;

(f) The DGP of the State, ex officio;

(g) Such other officers of the State Government as may be appointed by virtue of their office.

Provided in case of proclamation under article 356 of the Constitution, the Central Govt. may nominate five members in place of Sl. No. (a) and (b) above till its operation.

(3) (a) The Authority shall take appropriate action to facilitate all the actions specified in section 4 above.

(b) The authority shall lay down policies and monitor mitigation, prevention and preparedness and also oversee response.

Chapter IV
Function of Departments of the State Government

Function of the Government Departments

6. (1)The Government Departments of the State shall: -

(a) Provide assistance to Disaster Management Department, the District Collector/ District Magistrate and the local authority in setting up of communication centers, drawing up contingency plans, capacity building, data collection, identifying and training personnel, and carrying out the activities of disaster management;

(b) Carry out relief operation under the supervision of the Commissioner/District Collector;

(c) Assess the damage and carry out reconstruction and rehabilitation activities in accordance with the guidelines framed by the State Government.

(2) Every Government Department shall: -

(a) Prepare a disaster management plan as specified by the State Disaster Management Department.

(b) Co-ordinate preparation and the implementation of plan with other Departments, local authorities, communities and stakeholders;

(c) Conduct regular review and update the plan;

(d) Submit to the State Disaster Management Department the Disaster Management plan and amendment thereto.

(3) State Urban Development Department shall ensure the establishment of appropriate techno-legal regimes and its compliance in close co-ordination with State Disaster Management Department.

Chapter V

Power and Functions of the State Disaster Management Department

7. (1) The State Disaster Management Department shall generally take appropriate measures to fulfill the action spelt out in section 4 of the Act.

(2) The State Disaster Management Department shall: -

(a) Act as the central planning, coordinating and monitoring body for Disaster Management and post disaster reconstruction, rehabilitation, evaluation and assessment;

(b) Carry out the decisions of the State Government and State Disaster Management Authority for Disaster Management;

(c) Assist the State Disaster Management Authority as and when required by the Authority;

(d) Assist the State Government in formulation of policy relating to emergency relief;

(e) Provide feedback to the State Government, the Authority and Government Departments on progress and problems in Disaster Management;

(f) Promote general education and awareness on Disaster Management, emergency planning and response;

(g) Take specific measures in conformity with national road maps or State road maps for Disaster Management, whichever is applicable;

(h) Advice the District Collectors in carrying out Disaster Management activities;

(i) Formulate the mechanism for disaster mitigation analysis of all the projects/ schemes conceptualized/ implemented in vulnerable areas;

(j) Assist the State Government in putting up appropriate Techno-legal/ Techno-financial framework in place to mitigate the effects of earthquake and other disasters;

(k) Prepare suitable rehabilitation policy and recommend it to State Government for adoption;

(l) Assist the District Collectors in carrying out the Disaster Management activities in the concerned District;

(m) Co-ordinate the DM activities wherever two or more Districts are affected due to Disaster;

(n) Incorporate the local best practices in the field of Disaster Management and institutionalize the lessons through appropriate documents.

Chapter VI

Powers and Functions of the District Collector/District Magistrate

Power and Function the District Collector/ Magistrate

8. (1) During the period in an affected area the District of the Collector may issue directions to the officers of the Government departments and Local Authority in the affected areas, to provide emergency relief in accordance with Disaster Management Plans.

With Disaster management plans.

(2) The District Collector may: -

(a) make arrangements for release and use of available resources;
(b) regulate the traffic to, from and within the area affected by a disaster;
(c) the movement to facilitate the Disaster Management activities;
(d) remove debris;
(e) conduct search and rescue operations;
(f) make arrangement for the disposal of the dead bodies by appropriate means;
(g) provide alternative shelter;
(h) provide food, medicines and other essentials;
(i) take possession and make use of any property, vehicles, equipment, buildings and means of communication on such terms and conditions as may be prescribed;
(j) construct temporary bridges or other structures;
(k) demolish unsafe structures, which may endanger the public;
(l) coordinate the relief activities;
(m) direct and compel evacuation of all or part of the population from any affected area for the purpose of preservation of life and such evacuation and for such evacuation use such force as may be necessary;
(n) disseminate information to the public to deal with the disaster.
(3) The District Collector shall: -
(a) ensure that actions for prevention of a disaster or mitigation of its effects or preparedness to cope up with such effects are carried out in accordance with guidelines as maybe prescribed;
(b) ensure the establishment, functioning of fully equipped District Emergency Operation Centre with the support of State Government;
(c) ensure management and implementation of India Disaster Resource Network;
(d) ensure the training of District/ Sub Division / Gram Panchayat/Ward/Village officials, local bodies, community in Disaster Management;
(e) ensure that the District Disaster Management plans are prepared, revised and updated;
(f) facilitate and coordinate with local authorities to ensure that pre disaster and post disaster management activities in the District are carried out;
(g) facilitate information, Education and Communication activities for the communities, local bodies, officials;
(h) ensure linkages between Disaster Management activities and planning;
(i) ensure that communication systems are in order;
(j) ensure that the Fire Deptt has kept fire fighting equipments functional;
(k) coordinate the relief, rehabilitation and reconstruction activities;

(l) ensure the conduct of mock drill periodically;

(m) exercise such powers as may be prescribed/ delegated by the State Government in carrying out Disaster Management activities;

Chapter VII
Function of Local Authorities

Functions of Local Authorities

9. The local Authorities shall: -

(a) Ensure that its staff officials members are trained in Disaster Management;

(b) Ensure that all the buildings within its jurisdiction follow the earthquake resistant design;

(c) Ensure the upkeep of all its relevant resource for its use;

(d) Carry out relief operations in the affected area subject to directions of the District Collector/ State Government;

(e) Carry out reconstruction and rehabilitation activities in accordance with the guidelines;

(f) Constitute and maintain Disaster Management Committee and Disaster Management Teams;

(g) Prepare Disaster Management plan in accordance with guidelines, update and revise it;

(h) Implement the plans in close coordination with the State Government and the District Collector;

Functions of State Government Departments

10. (1) Each Department of the Government in a district shall prepare a Disaster Management plan for the district and the District Collector shall ensure that such plans are integrated into the Disaster Management plan for the whole of the district.

(2) This plan will incorporate all features of Disaster Management as prescribed by the State Government.

(3) Each Department of the Government in a District shall be responsible for effective implementation of the plans drawn up in this behalf.

Chapter VIII
Duties of Search and Rescue Teams, Police, Fire Services, Home Guards, Civil Defense

Duties of search and Rescue Teams, Police,Fire Services, Home Guards, Civil Defense

11. (1) Where an area is declared as disaster prone area or disaster affected area under clause (a) of sub-section (2) of section 16 as an affected area, the members of -

(a) Search and Rescue Teams

(b) Police Force

(c) Fire Services

(d) Home Guards

(e) Civil Defense

Shall perform the following function under the supervision of the Commissioner/ District Collector namely;

(a) giving of warning;

(b) carrying out search and Rescue operations and

(c) carrying out relief and rehabilitation operations.

(2) If a disaster occurs in any area the senior most officer from amongst the members of organizations specified in clauses (a) to (e) and of local authority and Department of the Government in such area shall report to the District Collector and carry out any instructions which the District Collector may issue for providing emergency relief.

(3) The Departments of the Government in the State shall generally carry out the functions specified in its Disaster Management plan as directed by the Commissioner/District Collector.

Chapter IX

Duties of Communities, Private Sector Enterprises & other Agencies or persons

Duties of Community group and youth organizations

12. Each community group and youth organization, such as the National Cadet Corps, National Service Scheme, Nehru Yuva Kendra may-

(a) assist the State Government, the Commissioner and the District Collector in all Disaster Management activities;

(b) participate in capacity building, vulnerability reduction programmes and training activities;

(c) assist in rescue and relief operations under the supervision of the Commissioner and the District Collector;

(d) provide such assistance to the Commissioner and the District Collector and take such other steps as may be necessary for Disaster Management.

Duties of Factories and Public Sector Enterprises

13. Each factory as defined under the Factories Act 1948, shall

(a) assist the State Government, the Commissioner and the District Collector in all Disaster Management activities;

(b) ensure that onsite and offsite plans are made in conformity with the local Disaster Management plans and tested for the implementation.

(c) take such other steps under the supervision of the Commissioner and the District Collector as may be necessary for Disaster Management;

Duties of voluntary agencies

14. All voluntary agencies, including Non Governmental Organizations, which desire to participate in Disaster Management activities, may.

(a) participate in capacity building, vulnerability reduction programmes and training activities;

(b) assist in relief operations under the supervision of the State Government, the Commissioner and the District Collector.

(c) provide such assistance to the Commissioner and the District Collector as may be necessary for effective Disaster Management.

Duties of citizens

15. It shall be the duty of every citizen to assist the Commissioner, the District Collector or such other person entrusted with or engaged in Disaster Management whenever his aid

is demanded generally for the purpose of Disaster Management and particularly for the following purposes namely: -

(a) Prevention,
(b) Response,
(c) Warning,
(d) Emergency operation,
(e) Evacuation,
(f) Recovery.

Chapter X

Declaration of area as Disaster Prone Area or Disaster Affected Area

Declaration of Area as Disaster Prone Area or Disaster Affected

16. (1) Where there is threat of impending Disaster or where a Disaster has occurred.

(a) In an area spread over more than one District, the Commissioner, and

(b) in an area restricted to a District, the DC may immediately make a report to that effect to State Government.

(2) (a) The State Government on receipt of such report shall declare such area as Disaster prone area or Disaster affected area through notification in the official Gazette and use other means to give wider publicity.

(b) Where the State Government decides not to make declaration under clause (a), it shall send communication to the Commissioner or, as the case may be, the District Collector.

(c) A notification under clause (a) shall specify the period not exceeding fifteen days during which the area shall, for the purpose of this Act, be the affected area:

Provided that the State Government may extend such period from time to time by any period not exceeding fifteen days at any one time.

(3) During the notified period the Commissioner or the District Collector, as the case may be, within an affected area perform such function related to-

(a) Prevention,
(b) Response.
(c) Warning,
(d) Emergency operation,
(e) Evacuation, and
(f) Recovery.

Chapter XI

Offences and Penalties

Offences and Penalties

17. Whoever: -

(a) Without reasonable cause prevents or obstructs any officer of the State Government or Local Authority or Commissioner or the District Collector from carrying out functions under this Act; or

(b) Without reasonable cause refuses to comply with the direction given by an officer of the State Government or of Local Authority or the Commissioner or the District Collector while carrying out his functions under this Act; or

(c) Falsely predicts the occurrence of a Disaster without any scientific basis and thereby creates panic in the community; or

(d) Makes a false claim for assistance for reconstruction or repair from any officer of the State Government or Local Authority or the Commissioner or the District Collector, shall on conviction be punishable with imprisonment for a term, which may extend to three months or with fine, which may extend to five thousand rupees or both.

Cognizance of offence

18. (1) No magistrate shall take cognizance of offence under section 17 except on a complaint in writing made by an officer specially authorized in this behalf by the State Government or the Commissioner or the District Collector.

(2) Notwithstanding anything contained in section 200 of the Code of Criminal Procedure 1973 it shall not be necessary in respect of the offence referred to in sub section (1) to examine the authorized officer or the Commissioner or the District Collector.

Chapter XII
Miscellaneous

Power of entry

19. The Commissioner or the District Collector generally or specifically authorized by the State Government / Authority in this behalf, may, at all reasonable times, enter upon any land and there do such things as may be reasonably necessary for the purpose of lawfully performing function imposed upon them by or under this Act.

Power to issue directions

20. (1) The Commissioner or the District Collector for the purpose of performing functions under this Act and for and for reasons to be recorded in writing issue an order directing a person to do or abstain from doing a specified thing within the affected area in which the emergency relief measures are being undertaken.

(2) Any person on receipt of such order shall comply with the same.

Protection of Act taken in good faith

21. No suit, prosecution or other legal proceedings shall lie against the State Government or any officers of the State Government or any other person for anything, which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation or order made there under.

Power to make rules

22. The State Government may make rules for carrying out the purposes of this Act.

Saving

23. Save as otherwise provided in this Act, no decision made in exercise of any power conferred by or under this Act shall be called in question in any Court.

By Order.

R.K. Purkayastha (SSJS)
LR. – cum- Secretary
Law Department
Government of Sikkim
File No. 16 (82) 2006